

Internal Revenue Service

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Date:
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Legend

Company =
State X =
Act =
Statute 1 =
Date 1 =
Date 2 =
Asset =
Collection Remedy =

Dear :

This letter responds to the letter dated June 18, 2007, submitted on behalf of the Company, requesting the following ruling:

The Company is not required to file Forms 1099-C with respect to the write-off of balances and charges pursuant to its settlement agreement because the discharge was not the result of an "identifiable event" listed in section 1.6050P-1(b)(2) of the Income Tax Regulations, but rather was required by operation of state law.

Facts

The Company is a publicly traded corporation engaged in the Asset finance business whose financing products are offered through a nationwide network of Asset dealers. On Date 1, a class action lawsuit was filed by consumers in State X against the Company alleging violations of State X state law with respect to Asset financing

contracts entered into with the Company. The lawsuit alleged several violations of State X law, including that the Company charged post-maturity interest and fees in excess of amounts due and that notices related to Collection Remedy did not meet statutory notice requirements. On Date 2, the Company and class plaintiffs signed a Memorandum of Understanding (MOU) settling the entire class action lawsuit. The MOU provides, inter alia, that the lawsuit be dismissed with prejudice and that the Company, with respect to all class members who had been subject to Collection Remedy (Collection Remedy class members), write off any deficiency balances remaining after the Collection Remedy. Additionally, with respect to all other class members (other class members), the Company has agreed under the MOU to write off all charges (interest, fees, etc.) other than the net cash price of the Asset.

Law & Analysis

Section 6050P of the Internal Revenue Code requires that an applicable entity report any discharges (in whole or in part) of indebtedness of any person in excess of \$600.00. In addition, section 1.6050P-1(b)(2) of the Income Tax Regulations provides that a discharge of indebtedness occurs if one of the following identifiable events takes place:

- (A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);
- (B) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or state court, as described in section 368(a)(3)(A)(ii) (other than a discharge described in paragraph (b)(2)(i)(A) of this section);
- (C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;
- (D) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;
- (E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;
- (F) A discharge of indebtedness pursuant to an agreement between an applicable financial entity and a debtor to discharge indebtedness at less than full consideration;
- (G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or
- (H) The expiration of the non-payment testing period, as described in paragraph (b)(2)(iv) of this section.

Out of the above events, only two have a potential bearing on the requested ruling.

The first possible event, section 1.6050P-1(b)(2)(F), states that an identifiable event

exists where the applicable financial entity and debtor agree to discharge the indebtedness for less than full consideration. To establish consideration, there must be a performance or a return promised which has been bargained for by the parties. Restatement (Second) Contracts § 71(1) (1981). In this case, the Company (an applicable financial entity) and the debtors are agreeing to the entry of a Court approved and supervised judgment which incorporates the MOU. At first blush, it appears that there is an agreement between Company and its debtors to discharge indebtedness. The agreement however, merely reflects the operation of state law. With respect to the Collection Remedy class members, the write-off of all Collection Remedy deficiency balances is based upon applicable State X case law, which bars recovery of any deficiency balance remaining after Collection Remedy for failure to strictly comply with notice requirements. With respect to all other class members, the write-off of all charges other than the net cash price of the Asset is required under State X Statute 1, which bars recovery of these amounts when there has been a violation of the Act; in this case, the charging of interest and fees in excess of amounts due. Therefore, the decision to discharge these balances and charges is not triggered by an agreement between the Company and the debtors. The discharge is triggered by the applicable State X case law and statutes; the agreement simply reflects the law. The fact that the Company and plaintiffs chose to settle the lawsuit as opposed to going to trial is immaterial. Thus, section 1.6050P-1(b)(2)(F) of the Income Tax Regulations does not apply.

The second possible event, section 1.6050P-1(b)(2)(G), holds that a discharge of indebtedness exists where a creditor discontinues collection activity pursuant to a decision by the creditor or a defined policy of the creditor. According to section 1.6050P-1(b)(2)(iii), a creditor's defined policy includes both a written policy and the creditor's established business practice. Neither a decision nor a policy triggers the cancellation of indebtedness in this case. As stated above, the applicable State X case law and statutory provisions trigger the discontinuance of the Company's collection activity. Thus, section 1.6050P-1(b)(2)(G) does not apply.

Based on the above analysis, the discharges by the Company are not subject to the reporting requirements of section 6050P or the regulations thereunder.

Conclusion

Based solely on the information provided and the representations made, we conclude that the Company is not required to file Forms 1099-C with respect to the write-off of balances and charges pursuant to its settlement agreement because the discharge was not the result of an identifiable event listed in section 1.6050P-1(b)(2), but rather was required by operation of state law.

This ruling is based on the facts presented and the applicable law in effect on the date of this letter. If there is a change in material fact or law (local or Federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

Except as specifically ruled herein, no opinion is expressed as to the federal tax treatment of any issue addressed in this ruling under other provisions of the Internal Revenue Code and Regulations that may be applicable.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Charles A. Hall
Senior Technician Reviewer,
Branch 1
(Procedure & Administration)

Enclosures:
Copy of letter
Copy for section 6110 purposes